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I am grateful to the Justice 2 Committee for their consideration of the Fire (Scotland) Bill and for the production of such a comprehensive report on the general principles of the Bill. You may recall that during my opening comments in the Stage 1 debate on 18 November, I indicated that I would respond to the Committee's report and the attached Memorandum addresses each issue raised in the report.

I am sure that you will agree with me that the debate was constructive. I found it particularly helpful and interesting to hear the views of members who are not on the Committee on the issues in the report.

During the debate I indicated that the Executive would give careful consideration to members comments and in that regard the Executive will be bringing forward a number of amendments at Stage 2. These will cover issues such as Firefighting at Sea; changing from negative to affirmative the procedure for making Amalgamation Orders; making the Chief Officer responsible to his Fire and Rescue Authority for the discharge of his functions. We will also be bringing forward a number of technical and 'tidying up' amendments in relation to Part 3. Finally, there will be a range of consequential amendments to other legislation which we will also be bringing forward. I look forward to discussing these and other issues with the Committee as we continue the consideration of the Bill.

I hope this is helpful.

HUGH HENRY

FIRE (SCOTLAND) BILL

MEMORANDUM: RESPONSE TO JUSTICE 2 COMMITTEE'S REPORT ON GENERAL PRINCIPLES

1. The Scottish Executive is pleased that the Justice 2 Committee has endorsed the general principles of the Fire (Scotland) Bill and welcomes the constructive recommendations made in the Committee's report. During debate in the Parliament on 18 November, the Deputy Minister for Justice addressed the majority of issues raised in the report but he indicated that a number would require further consideration. This Memorandum sets out the Executive's response to the Committee's report, including an update on progress where further consideration was indicated.

General

In light of the concerns expressed, the Committee asks the Minister to clarify the line of reporting responsibility from the Firemaster to the Fire Authority.

2. In his opening remarks to the Parliament on 18 November, the Minister repeated the statement he had made to the Committee during oral evidence, that the Fire and Rescue Service is a local authority service and it will continue to be managed locally. He also indicated that the Executive would reflect further on whether there was a need to clarify the role of the chief officer and accountability to the fire and rescue authority or joint fire and rescue board. Having considered the matter further, the Executive intends to lodge an amendment to clarify the role of the Chief Officer and accountability arrangements.

Part 1: Fire and Rescue Authorities

Amalgamation Schemes

The Committee seeks assurances that the consultation required under Section 2 will be comprehensive and transparent and will include all interested parties.

3. During the debate on 18 November, the Minister reminded members that the power to amalgamate fire authorities has existed since the passing of the 1947 Act and this power will continue in a modified form. Fire and rescue authorities will still have the opportunity to put forward proposals for amalgamation for consideration by Ministers but the Bill confirms that it will be for Ministers to decide whether amalgamation would achieve greater economy, efficiency and effectiveness.

4. With regard to the requirement for consultation, the Executive is happy to provide assurances that the consultation will be comprehensive and transparent, including all interested parties. In addition, as the Minister indicated during the debate, the Executive will lodge an amendment to change the Parliamentary procedure for the order so that it will be subject to the affirmative procedure rather than the negative procedure.

Control Rooms

The Committee invites the Minister to consider carefully the concerns raised and to address them specifically in the further round of consultation.

5. The Executive has noted the concerns raised in relation to control room arrangements and as the Minister emphasised during the debate, further work is being carried out and the Parliament will be notified of the subsequent conclusions.

Firelink Project

The Committee requests that the Minister provides further details of the issues under consideration.

6. National procurement of a new radio system (Firelink) for the Fire and Rescue Service will provide a modern radio communications system; more importantly it will provide for interoperability within the Fire Service across the UK and with the other emergency services. It will provide a robust and resilient radio communications systems for the Fire and Rescue Service. A UK Project Board led by the Office of the Deputy Prime Minister (ODPM) on which the Scottish Executive and COSLA are represented, has been set up and negotiations with the bidders are at an advanced stage but it will be some months yet before a contract is concluded.

Part 2 – Fire and Rescue Services

Firefighting at Sea

The Committee welcomes the Executive’s intention to bring forward amendments at Stage 2 to include the issue of offshore firefighting.

7. Noted.

Section 11 - Emergency Directions

The Committee seeks clarification about who would be in overall command and control in a major fire situation.

8. Emergency Directions under section 11 would only be issued by Ministers to ensure a level of central operational control and make certain that all relevant expertise is utilised for an effective and co-ordinated response. However, it will be for the emergency services who have been mobilised to attend the incident to make decisions about the management and control of the situation “on the ground”.

Section 15 – Charging

The Committee seeks assurances that fire authorities’ budgets will not be compromised by any changes resulting from this Bill and that any loss of ability to generate income will be compensated for.

9. At present, fire authorities have discretionary powers to charge for exercising certain functions on a cost recovery basis. Currently preparation of fire certificates is one of the activities for which all authorities charge. In 2003-04, there were 24,704 fire certificates in force in Scotland of which 472 had been issued that year. However, it is worth noting that the revenue fire authorities get from charging for fire certificates relates only to administrative work carried out in preparing the certificate and does not include costs of inspection. It is estimated that in 2002-03, income of £165,000 was earned from issuing and amending fire certificates. This income, however, represents only a fraction of the Fire and Rescue Service’s revenue budget and any loss from the non-issue of certificates will be compensated by not having to undertake the administrative work associated with the issuing of certificates. There will be no change to the ability of fire and rescue authorities to charge for other aspects of their activities. However, they will not be allowed to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life.

10. Under the new fire safety regime, fire certificates will no longer be issued and there will therefore be no costs to recover in relation to work required on certification. We expect that enforcement officers will have more time to inspect rather than being desk-bound preparing detailed certificates.

The Committee is content with the extent of detail in the provisions.

11. Noted.

Fire hydrants

The Committee agrees that there is merit in the water supplier having the responsibility for maintaining water hydrants but wishes clarification of the financial implications for the fire service were this transfer of responsibility to be recommended. The Committee draws the Minister’s attention to the evidence taken and invites him to consider the issue further.

12. As the Minister indicated in his opening speech on 18 November, he is in discussion with the Minister for Environment and Rural Development and will update the Committee in due course.

Common Fire and Rescue Services Agency

The Committee welcomes the Minister’s decision not to establish an Agency at this stage but to encourage co-operation through informal arrangements if these could be shown to be effective.

13. Noted.

Restriction on the employment of police officers

The Committee recognises that there are valid arguments on both sides and await the results of the Minister's further discussions.

14. Following further consideration, the Minister has concluded that the restriction on the employment of police officers should continue. The committee will be aware that in addition to the Association of Chief Police Officers (Scotland) and the FBU supporting the status quo, the Scottish Police Federation also opposes any change.

National Framework

The Committee welcomes the fact that the Executive is now consulting on the National Framework.

15. The pre-consultation period ended on 2 December and the Executive is currently considering the responses received from CFOA, COSLA and the FBU. A full consultation is scheduled to commence in the New Year and will run for a period of 3 months.

Part 3 – Fire Safety Duties

Advertising campaign for new fire safety regime

The Committee agrees with the Finance Committee and requests an estimate of costs for the campaign in advance of Stage 2 consideration.

16. The Executive is committed to a publicity campaign for the new fire safety regime but it is difficult to estimate the costs of the campaign at this early stage. Discussions are continuing with stakeholders to help clarify the various groups which will be affected which, in turn, will help identify the most appropriate medium for targeting these groups.

17. However, as the Head of the Justice Department's Fire Services Division indicated in oral evidence to the Finance Committee on 14 September, it is anticipated that in excess of £200,000 will be required to fund this campaign.

Fire safety and enforcement

The Committee invites the Minister to continue discussions with the FBU and others to try and allay their concerns. In relation to the evidence on HMOs and care homes, the Committee invites the Executive to reflect further on whether the single enforcing authority approach is the most effective.

18. Justice Department Bill Team officials met with representatives from the FBU in October to discuss their concerns and it is anticipated that this dialogue will continue as the Bill progresses through the Parliament.

19. During the debate on 18 November, the Minister assured the Parliament that the current multi-agency approach to HMO and care home visits will be retained so future visits will look and feel the same. The only difference will be that the fire and rescue authority will be the enforcing authority in respect of fire safety and will have the final say on what is

acceptable to secure people's safety in the event of a fire. The Executive considers that this will be the most effective and most appropriate allocation of responsibility.

20. During the Committee's evidence session on 28 September, the Minister was asked if the fire safety regulations would be available for examination prior to Stage 3 and he indicated that it was anticipated that drafting would have been completed by the end of the year. It is the Executive's aim to make the draft regulations available to the Committee prior to Stage 2.

Offence provisions

The Committee is of the view that a maximum penalty should be stipulated in respect of regulations made about fire safety under section 54.

21. We are currently considering this.

Section 71 - Relevant premises

The Committee welcomes the proposed Stage 2 amendment in respect of regulations to modify the meaning of "relevant premises" being subject to affirmative rather than negative parliamentary procedure.

22. Noted.

Advisory structure

The Committee welcomes the Executive's intention to consult shortly on the replacement structure and encourages the Executive to ensure that the results of this consultation are known before the Bill's passage is complete.

23. During the debate on 18 November, the Minister explained that three consultation papers would be issued in December, one of which would relate to the advisory structure, and the consultation would be for a period of three months. This will mean that it will conclude after the Bill is expected to have completed its passage through the Parliament.

24. A shorter timescale was considered but as the 3 months includes Christmas and New Year and the Scottish Executive's good practice guidance on consultations stipulates 12 weeks, the Minister concluded that the full 12 weeks should be allowed. The consultation papers were published on 14 December and distributed to almost 150 key stakeholders. Copies of the papers were also forwarded to the Committee and SPICe. All three papers and an online questionnaire are available on the Scottish Executive's website.

Issues not included in the Bill

Masquerading as a Firefighter

The Committee is interested in why the Executive feels that there is a distinction to be drawn between impersonating a police officer, a specific statutory offence, and impersonation of a firefighter where no specific statutory offence exists or is proposed.

25. While the Executive understands the Committee's concerns about the misuse of Fire and Rescue Service uniforms, equipment and letterheads, it is of the view that the common law offence of fraud would be sufficient to cover circumstances in which practical gain was the objective of impersonation e.g. a bogus caller attempting to gain entry to premises and thereby access to assets on the basis of a community safety visit or fire safety enforcement inspection. Therefore we do not think that a specific statutory offence should be introduced for impersonation of a firefighter.